NO. 94643-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PIERCE COUNTY, a political subdivision of the State of Washington; and BLAIR SMITH, individually, and as an employee of Pierce County,

Petitioners,

v.

MARGIE M. LOCKNER, a single woman,

Respondent.

BRIEF OF AMICI CURIAE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS, ASSOCIATION OF WASHINGTON CITIES, AND CASCADE WATER ALLIANCE

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I. INTRODUCTION

Washington's recreational immunity statute, RCW 4.24.200-.210, is meant "to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes" by limiting the liability of the owners or possessors of lands with respect to unintentional injuries incurred on their lands by recreational users. In contravention of the plain language of the statute, Division II limited the application of the statute to lands that are open exclusively for recreation and to owners or possessors that have the authority to close the land. When considered in the context of land use in Washington and the level of certainty needed by landowners regarding their exposure to liability before they open their lands to recreation, it is clear that Division II's decision also undermines the objective that is embodied in the statute. Application of the rules announced in *Lockner* below would affect decisions of many public bodies, from schools to cities, and force them to consider locking up their lands because the risk of liability is too high. In reaching its decision, Division II overextended this Court's decision in *Camicia v. Howard S. Wright Construction Co.*, 179 Wn.2d 684, 317 P.3d 987 (2014), contradicted longstanding jurisprudence, and misinterpreted the statutory text. *Amici* respectfully urge this Court to clarify its decision in *Camicia* and reverse the decision below.

II. IDENTITY AND INTEREST OF AMICI CURIAE

The Washington State Association of Municipal Attorneys ("WSAMA"), the Association of Washington Cities ("AWC"), and Cascade Water Alliance's ("Cascade," and, collectively, with WSAMA and AWC, "Amici") Motion to File an Amici Curiae Brief sets forth the identity and interest of the Amici and is incorporated here by reference.

Local governments are uniquely affected by appellate interpretations of Washington's recreational immunity statute, RCW 4.24.200–.210. In particular, municipalities rely on the recreational immunity statute to protect themselves from liability that may arise when they take actions to meet their obligations under the Growth Management Act ("GMA") to plan and provide for adequate parks and recreation facilities as well as transportation facilities. *See* RCW 36.70A.070(6), (8). As a result of their unique role in making the urban environment livable, cities and towns are particularly vulnerable to the uncertainty surrounding the recreational immunity statute that has resulted from the Court of Appeals' decision at issue in this case. WSAMA, AWC and Cascade file this brief on behalf of local governments seeking to resolve that uncertainty so that cities and towns may plan for recreational and transportation needs, and open appropriate lands to recreational uses, in a way that does not expose them to needless liability.

III. ISSUES ADDRESSED BY AMICI CURIAE

1) Does Washington's recreational immunity statute, RCW 4.24.200–.210, require landowners, hydroelectric project owners, and

others in possession and control of land to open that land solely for the purpose of public outdoor recreation?

2) Does Washington's recreational immunity statute require landowners, hydroelectric project owners, and others in possession and control of land to have the "authority to close" that land in order to avail themselves of the limitation of liability provided by the statute?

3) Does Washington's recreational immunity statute extend to claims of negligence?

IV. STATEMENT OF THE CASE

WSAMA adopts the statement of the case set forth in *Lockner v. Pierce County*, 198 Wn. App. 907, 909-10, 396 P.3d 389 (Wash. Ct. App. Div. II 2017), *rev. granted*, 189 Wn.2d 1009, 403 P.3d 45 (2017).

V. ARGUMENT

A. The Recreational Immunity Statute Does Not Require Landowners to Open Their Land Solely For Recreational Purposes.

The recreational immunity statute, in pertinent part, provides that:

> Except as otherwise provided . . . any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation . . . without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

RCW 4.24.210(1). Division II erroneously interpreted and applied this statute and *Camicia's* interpretation thereof, when it insisted that, for recreational immunity to apply, property must be opened "solely for the purpose of recreation." *Lockner*, 198 Wn. App. at 909. This interpretation overextended the *Camicia* decision and is inconsistent with the plain text and objectives of the statute, longstanding precedent of this Court, and numerous other lower court decisions. The Court should reject Division II's interpretation of *Camicia*.

1. Division II dramatically misapprehended this Court's holding in *Camicia*.

In 2014, this Court issued a split decision in *Camicia*, which addressed the applicability of the recreational immunity statute in a narrow factual scenario. *Camicia,* 179 Wn.2d 684. *Camicia* involved a woman who suffered severe injuries while bicycling on the I-90 bike path on Mercer Island. *Id.* at 690. The location where the accident occurred was subject to a restriction in a quitclaim deed, transferring the land from the Washington State Department of Transportation ("WSDOT") to Mercer Island "for road/street purposes *only*." *Id.* (emphasis added). Both WSDOT and the Federal Department of Transportation had previously determined that the location—which served as "the only means for non-motorized access… across Lake Washington [and] an important link in the regional transportation system"—primarily served a transportation function. *Id*. at 689. The trial court granted summary judgment to the City

of Mercer Island, but this Court reversed and remanded, finding that there was a question of fact as to whether the property was open to the public for any recreational purpose at all. *Id*. at 700. This Court merely held that there were questions of fact precluding summary judgment as to the applicability of the immunity statute on the basis that evidence with respect to the purpose for which the trail was opened conflicted on material points. *Id*. at 699–700.

Respondent and Division II failed to seek guidance from this Court's actual holding in *Camicia* in concluding that *Camicia* requires that the land be open exclusively for recreational use. Instead, Division II relied on the dissent's characterization of the majority's holding in *Camicia* to reach this result. *See Lockner*, 198 Wn. App. at 915 (quoting *Camicia,* 179 Wn.2d at 704 (Madsen, C.J., dissenting)). However, *Camicia* stands only for the limited proposition that, where there is evidence that land may have been opened exclusively for non-recreational purposes, it is a question of fact whether the public invitation can be said to be for purposes of recreation. *See Archer v. Marysville Sch. Dist.,* 195 Wn. App. 1014 (Wash. Ct. App. Div. I 2016) (unpublished).[1]

The focus of the Court's inquiry in *Camicia* was whether the land was opened for any recreational purpose. This is demonstrated by the fact that in *Camicia*, the Court distinguished the I-90 bike trail from land in cases in which recreational immunity was found to apply because there

[1] The *Archer* case is cited as a nonbinding authority pursuant to GR 14.1.

was no question that one of the uses for which the land was open to the public was recreation. *See Camicia*, 179 Wn.2d at 697-698, (citing *McCarver v. Manson Park & Rec. Dist.*, 92 Wash.2d 370, 597 P.2d 1362 (1979), ("In *McCarver*, it was undisputed that the public was allowed to enter for a recreational purpose"); *Chamberlain v. State, Dep't of Transp.*, 79 Wn. App. 212, 214, 901 P.2d 344 (1995), ("It was undisputed in *Chamberlain* that the overlook was recreational in nature"); *Riksem v. City of Seattle*, 47 Wn. App. 506, 508, 736 P.2d 275 (Wash. Ct. App. Div. I 1987), ("*Riksem* did not dispute that the trail was open to the public for the purposes of outdoor recreation")). Notably, the court did not overrule any of those decisions, or consider whether recreational use was the exclusive use in those cases.

The Court, faced with evidence that the path may have been open exclusively for *non-recreational* purposes, was concerned that an unscrupulous city would attempt to "extend [immunity] to every street and sidewalk," based upon the opportunity pedestrians may have to "view or enjoy historical sites." *Camicia*, 179 Wn.2d at 699. *Camicia* effectively precluded this possibility by requiring that one purpose behind *opening* the land is recreation, but never suggested that the land must be *exclusively* used or open for recreation, nor did the Court need to go so far to preclude abuse of recreational immunity by cities. So long as recreation is one legitimate purpose for the opening of land, the Court's concern about such abuse is avoided. In short, because Division II's interpretation overextends *Camicia*, it should be rejected.

2. Division II's interpretation of *Camicia* is inconsistent with this Court's prior decisions.

This Court and the Court of Appeals have repeatedly declined to interpret the recreational immunity statute to require a determination of the "extent" of the recreation. Division II's test in *Lockner* would require courts to do just that and, thus, is at odds with precedent *Camicia* did not disturb.

In *McCarver*, the plaintiff was killed in a diving accident at a local park. 92 Wn.2d at 371-372. The estate argued that the statute should not apply because the land was held open "exclusively" for recreational use. *Id*. at 377. This Court rejected the argument, observing that recreational immunity does not turn on the "extent" of recreation: "We decline to impose a limiting construction upon the statute differentiating land classifications based upon primary and secondary uses where the legislature did not." *Id*. Subsequently, the Court of Appeals adopted holdings consistent with *McCarver*. *See, e.g*, *Riksem*, 47 Wn. App. at 512 (holding when walking, running, or bicycling, "an individual is at least secondarily gaining the benefits of recreation even though his primary goal may be the actual act of commuting."); *Chamberlain*, 79 Wn. App. at 348 (holding that "[t]he fact that 'highway' and 'sidewalk' are defined elsewhere does not require that they be excluded from the provisions of the recreational use immunity statute."); *Widman v. Johnson*, 81 Wn. App. 110, 114, 912 P.2d 1095 (Wash. Ct. App. Div. II 1996) (finding that "other purposes… lack[ed] legal significance").

If Division II's interpretation of *Camicia* were correct, *Camicia* would have overruled each of these cases, including *McCarver*, but the Court in *Camicia* correctly chose not to disturb them. These cases reject the notion that recreational immunity depends on the extent of the recreation, which is the very type of inquiry that will be required if *Lockner* is upheld and a court has to determine whether the land is open *exclusively* for recreation. Determining the *intended* extent of the recreational use is no different than determining the extent of the recreation. Moreover, many uses recognized by the recreational immunity statute as "recreation" serve dual or secondary purposes, such as transportation. To determine whether land is open exclusively for recreation when such multi-purpose uses are permitted will require the court to either write these multi-purpose uses out of the statute completely, or determine the extent to which such uses were meant to be recreational in each case. Therefore, *Lockner* would require a court to do precisely what this Court rejected in *McCarver*: determine the *extent* of the recreation.

Although *Camicia* distinguished *McCarver* and its progeny of cases factually, neither this Court nor the Legislature have disturbed the holding in *McCarver*. Indeed, *McCarver* pointed to the lack of a balancing requirement in the statutory text, and the Legislature took no action following the *McCarver* decision to adopt such a requirement. Thus, the Legislature is presumed to have acquiesced to *McCarver's* interpretation. *See Kovacs v. Dep't of Labor & Indus.*, 188 Wn. App. 933,

938, 355 P.3d 1192 (Wash. Ct. App. Div. III 2015), *rev'd on other grounds*, 186 Wn.2d 95, 375 P.3d 669 (2016) (citing *Sandahl v. Dep't of Labor & Indus.*, 170 Wn. 380, 383–84, 16 P.2d 623 (1932); *Buchanan v. Int'l Bd. Of Teamsters, Chauffeurs, Warehousemen and Helpers*, 94 Wn.2d 508, 511, 617 P.2d 1004 (1980)) ("[W]here [the legislature] does not change the statute, the legislature is deemed to have acquiesced to the judicial interpretation.")). Because *Lockner's* exclusivity test is inconsistent with the holding in *McCarver* to which the Legislature has acquiesced, that test should be rejected.

3. Division II's interpretation is contrary to the recreational immunity statute.

Lockner's exclusivity test is also inconsistent with the recreational immunity statute and violates rules of statutory construction.

a. The plain meaning of the statute.

Division II's interpretation is at odds with the plain meaning of the statute. "The fundamental objective of statutory construction is to ascertain and carry out the intent of the Legislature. Where statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself." *Chamberlain,* 79 Wn. App. at 217 (citing *Rozner v. Bellevue,* 116 Wn.2d 342, 347, 804 P.2d 24 (1991)). Here, the plain language of the statute does not state, or even imply, that recreational use must be the sole or exclusive use of the land.

Division II's interpretation is also inconsistent with the manifest object of the statute. *See Riksem,* 47 Wash. App. at 510–11. In

Washington "[a] statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one of which will carry out and the other defeat the manifest object, it should receive the former construction." *Roza Irrigation Dist. v. State*, 80 Wn.2d 633, 637–638, 497 P.2d 166 (1972) (citing 2 J. Sutherland, *Statutory Construction* s 4704 (3rd ed. 1943)). The statute clearly states it is an encouragement for owners/possessors in control of land to make land available to the public for recreational purposes by limiting their liability. RCW 4.24.200. Even landowners who open their land to the public for a non-recreational purpose still need encouragement to open their land for recreational purposes. A landowner may agree to open its land for a non-recreational purpose, but may prevent and police recreational uses to avoid greater risks or more damage to the property from those activities. Division II's interpretation also discourages public entities from opening their property to recreation in light of dual-use statutes and grant funding requirements. In some cases, when cities and towns choose to make lands available to the public for recreational purposes, they are *required* to also make them available for other purposes such as transportation. For example, where a city or town uses funds for paths, lanes, roadways, routes, or streets, such corridors "shall be suitable for bicycle transportation purposes and not solely for recreation purposes." RCW 35.75.060. In other cases, dual use is encouraged or preferred by the statutory scheme. For example, Washington's GMA contemplates and encourages a dual-use approach to land use, and it requires cities to plan

for it. RCW 36.70A.070(1), (6). Municipalities may also select multiple-use projects because grant programs often give preference to such projects, and without such funding, municipalities would instead need to sell the property for development. If municipalities must choose between making their lands available for "dual use" with no immunity, or closing their lands to the public, they may choose to close their land.

b. Division II's interpretation violates rules of statutory construction.

Even if the Court determines that the statute is ambiguous, Division II's interpretation violates rules of statutory construction, including rules prohibiting interpretations that add words to the statute, interpretations that render particular words or phrases meaningless, and interpretations that lead to absurd results.

(i) Division II's interpretation adds words to the statute.

A requirement of exclusive recreational use is found nowhere in the statute. By adding an exclusivity test, Division II violated the rule that a "court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission." *Auto. Drivers & Demonstrators Union Local No. 882 v. Dep't of Ret. Sys.*, 92 Wn.2d 415, 421, 598 P.2d 379 (1979) (citations omitted); *Vita Food Prods., Inc. v. State*, 91 Wn. 2d 132, 587 P.2d 535 (1978).

(ii) Division II's interpretation writes public lands out of the statute.

Because most public lands are not limited to recreational use, Division II's interpretation practically writes public lands out of the statute. This result is absurd in light of the fact that the statute was explicitly amended to make recreational immunity apply to public lands and it is contrary to the state's public policy which relies upon cities and towns to accommodate all of the urban needs that come along with urban density (including recreational and transportation needs). There are countless examples of public properties that are open for recreation, but for which recreational immunity will no longer be available or will be uncertain under Division II's interpretation, including parks that include food gardens; community areas or facilities that can be used for education, business retreats, weddings, church services, tribal cultural practices or political events; playgrounds and pools that are used for therapeutic opportunities; school fields and gyms that are opened to the public for sports; beach parks that allow shellfish harvesting; airstrips open to recreational flights and to search and rescue missions; and utility reservoirs and corridors that have been opened to recreation. Furthermore, many cities' non-motorized transportation plans do not distinguish between recreational and transportation uses and often intentionally rely upon dual uses to meet the public's needs.

Thus, Division II's interpretation must be rejected as it violates rules of statutory construction prohibiting interpretations that led to absurd

results and interpretations that render particular words or phrases meaningless. *See Cooper's Mobile Homes, Inc. v. Simmons*, 94 Wn.2d 321, 327, 617 P.2d 415 (1980) ("[W]e should not so interpret a statute as to reach an absurd result"); *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (statutes should also not be read to render a portion meaningless or superfluous).

(iii) Division II's interpretation renders superfluous certain recreational uses mentioned in the statute.

Although statutes should not be read to render a portion meaningless or superfluous, *J.P.*, 149 Wn.2d at 450, the effect of Division II's decision is to "write out" of the statute many recreational uses expressly included in the statute that serve dual purposes, including "bicycling," "boating," "horse-riding," "nonmotorized wheel based activities," and "pleasure driving." RCW 4.24.210(1). The courts and the Legislature recognize the dual nature of these activities. *See, e.g.*, RCW 47.06.100 (designating bicycles as an integral part of Washington's statewide multimodal transportation); RCW 4.24.210 (listing "bicycling" as an example of outdoor recreation); *Riksem*, 47 Wn. App. at 512 ("If an individual is commuting from one point to another, by either walking, running, or bicycling, said individual is at least secondarily gaining the benefits of recreation even though his primary goal may be the actual act of commuting.") If opening land for activities that serve dual-purposes results in land no longer being deemed as open exclusively for recreation,

the dual-purpose activities mentioned in the statute are rendered superfluous.

Even if allowing dual-purpose activities does not lead to the failure of the exclusivity test per se, it is impossible for landowners to prove that they intended that users conduct such multi-purpose activities only for recreational purposes. "[U]nder the statute, a landowner is not required to anticipate the various ways that people might use its property," *Tennyson v. Plum Creek Timber Co., L.P.*, 73 Wn. App. 550, 556, 872 P.2d 524 (Wash. Ct. App. Div. I 1994), *rev. denied* 124 Wn.2d 1029 (1994), nor is it possible for landowners to do so. Although cities could engage in a meaningless paper exercise of creating a record that the land was opened for recreation only, in practice these areas would still be used for non-recreational purposes if these dual-purpose activities are allowed. Division II's approach must, therefore, be rejected because it creates absurd results and renders portions of the statute superfluous.

B. The Recreational Immunity Statute Does Not Require Landowners to Have Authority to Close Their Properties.

Division II also relied on *Camicia* to hold that a landowner must have authority to close its land to the public to qualify for recreational immunity. *Camicia* appears to be contrary to this interpretation as the Court concluded that a factfinder could conclude that recreational immunity could attach even though there was evidence that the City could not close the property. 179 Wn.2d at 700-701. To the extent that *Camicia* supports Division II's interpretation of RCW 4.24.200-.210, Amici

respectfully urge this Court to revisit and reverse its position as announced in *Camicia*. This Court will overrule prior decisions when they are incorrect and harmful. *See Rose v. Anderson Hay & Grain Co.*, 184 Wn.2d 268, 358 P.3d 1139 (2015). Decisions are incorrect when they are inconsistent with the constitution or statutes. *State v. Barber*, 170 Wn.2d 854, 864, 248 P.3d 494 (2011) (citing *State v. Devin*, 158 Wn.2d 157, 168-69, 142 P.3d 599 (2006)). Decisions may be harmful when they are detrimental to the public interest. *Barber*, 170 Wn.2d at 865 (citing *In re. Stranger Creek*, 77 Wn.2d 649, 654, 466 P.2d 508 (1970)). Interpreting the recreational immunity statute to require that a landowner must have authority to close its land to the public adds requirements to the statute and pursues the purpose of the statute at the expense of the plain text.

The plain text contains no express requirement that a landowner must be able to close its land to the public to avail itself of recreational immunity. Instead, *Camicia* and Division II's decision in *Lockner* rely solely on the purpose provision of the statute to support this interpretation, asserting that "extending recreational immunity to landowners who lack authority to close the land to the public 'would not further the purpose behind the act.'" *Camicia*, 179 Wn. 2d at 696 (citing RCW 4.24.200). This reliance on RCW 4.24.200 was erroneous. While the purpose section of a statute may be consulted to help interpret the statutory text, the "court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission." *Auto. Drivers & Demonstrators Union Local No. 882*, 92 Wash. 2d at 421(citations

omitted). The United States Supreme Court has held that: "[i]nvocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent." *Bd. of Governors of Fed. Reserve Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 374 (1986); *see also Rodriguez v. U.S.*, 480 U.S. 522, 526 (1987) ("[I]t frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law."). This Court has followed suit, finding that a policy statement "does not detail requirements or limitations regarding a right conferred by a provision that is positioned later in the enactment." *Bailey v. State*, 147 Wn. App. 251, 263, 191 P.3d 1285 (2008); *Melville v. State*, 115 Wn.2d 34, 38, 793 P.2d 952 (1990) ("statutory policy statements as a general rule do not give rise to enforceable rights and duties.") (quoting *Aripa v. Dep't of Social & Health Servs*., 91 Wn.2d 135, 139, 588 P.2d 185 (1978)).

Furthermore, providing immunity to landowners who lack ability to close their lands is not *inconsistent* with the statutory objective to encourage landowners to open their land for recreation. As the dissent recognized in *Camicia*, the authority to close land to non-recreational purposes (e.g. transportation) does not "implicate the statute's goal of encouraging additional opportunities for outdoor recreation." *Camicia*, 179 Wn.2d at 711. While landowners who lack the authority to close their land *to recreation* may gain an incidental benefit of recreational immunity, this is not contrary to the purpose of the statute. It is only contrary to the

purpose of the statute if the interpretation *discourages* landowners from opening their lands to recreation or encourages land owners to limit access or activities or *close* their lands to recreation. Indeed, requiring that landowners be able to close their lands to qualify for recreational immunity works against the purposes of the statute because it undermines certainty that recreational immunity will be available by mandating a fact-intensive inquiry into the nature of a landowner's title to property. As the legislative history recognizes, "immunity needs to be extremely clear if landowners are to be encouraged to allow the public to use their land for recreational purposes." H.R. Rep. No. 50 (Wash. 1979).

The "authority to close" requirement also cannot be implied from the statutory requirement that immunity applies only to landowners and others that have "possession and control" of the land. RCW 4.24.210. First, the "possession and control" requirement only applies to "others," and does not modify the term "landowner" in the statute. Nevertheless, Division II would require that landowners would have to have the authority to close their land. Second, requiring that an entity have the "authority to close" the land is far more restrictive than limiting immunity to those with "possession and control" of the land. Nevertheless, *Camicia* apparently derives the "authority to close" requirement from *Tennyson,* a case in which the court considered whether non-landowner contractors hired to do excavation work could avail themselves of recreational immunity based on their possession and control over the land. 73 Wn. App. at 555-56. The *Tennyson* court only considered the contractors'

authority to close the land as a proxy for possession and control where there was otherwise no indication that the contractor had any continuing control over the land.

When the "authority to close" requirement is applied outside of the narrow factual scenario of *Tennyson,* it is clear that the test is far more stringent than what is required by the plain text of the statute even if we assume that the "possession and control" requirement applies to landowners, which it does not. A landowner and others may have possession and control even where they lack the authority to close their land. Indeed, many public entities own their lands in fee simple, but lack the authority to close their land for specific purposes. For example, when cities and towns choose to make lands available to the public for *recreational* purposes, they are, at times, required by state law to also make them available for *transportation* purposes. *See* RCW 35.75.060. In other cases, municipalities are required by federal law to allow the public to access certain facilities, such as hydroelectric projects, for recreational purposes. *See, e.g.*, 18 C.F.R., pt. 2.

Because neither the plain text nor the purpose of the statute can support the interpretation that a landowner must have the authority to close its property to avail itself of recreational immunity, this interpretation should be rejected.

C. Recreational Immunity Extends To Claims of Negligence.

Division II correctly ruled that the recreational immunity statute extends to negligence claims. *Lockner*, 198 Wn. App. at 916. The court

reasoned that the statute's broad reference to "unintentional injuries" unambiguously referred to all such injuries, not just injuries for which a premises liability claim has been asserted, and that negligence and premises liability are not necessarily separate torts. *Id*. at 916-17, 917 n. 4 (citing *Curtis v. Lein*, 169 Wn.2d 884, 888-89, 239 P.3d 1078 (2010)). Indeed, this Court and lower courts have recognized premises liability as a type of negligence. *Curtis*, 169 Wn.2d at 888 (analyzing premises liability as a type of negligence); *Mucsi v. Graoch Assocs. Ltd. P'ship No. 12*, 144 Wn.2d 847, 854, 31 P.3d 684 (2001) (discussing negligence elements under the heading "Landowner's Duty to Invitees"). *See also* Restatement (Second) of Torts div. II, ch. 12–13 (addressing premises liability under the topic of negligence); *Davis v. State*, 144 Wn.2d 612, 616, 30 P.3d 460 (2001) (noting that, while the degree of care is generally related to the plaintiff's status as invitee, licensee or trespasser, statutory immunity cut through the various status points and provided immunity for "unintentional" injuries).

Lockner cites no relevant authority for her contrary position. This Court should therefore reject Lockner's invitation to rewrite RCW 4.24.210 and reaffirm its well-established holding that statutory immunity is predicated on the injury being "unintentional" rather than the status of the recreational entrant.

VI. CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be reversed, and *Camicia* should be clarified.

RESPECTFULLY SUBMITTED this 12th day of January, 2018.

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CERTIFICATE OF SERVICE

I certify that on this day, January 12, 2018, I electronically filed the foregoing Brief of *Amici Curiae* Washington State Association of Municipal Attorneys, Association of Washington Cities, and Cascade Water Alliance using the Washington State Appellate Court's Secure Portal which will send notification of such filing to following, in addition to sending the foregoing as an attachment to electronic mail messages to the following, all of whom have consented in writing to accept service via this method:

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January 12, 2018 - 2:51 PM

Transmittal Information

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Appellate Court Case Title:	Margie Lockner v. Pierce County, et al.
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